

# Lay Representation of Abused and Neglected Children

## *Variations on Court Appointed Special Advocate Programs and Their Relationship to Quality Advocacy*

**A**bused and neglected children may be represented in court by an attorney, an attorney guardian ad litem, a nonlawyer guardian ad litem, and/or a trained volunteer acting as the guardian ad litem or Court Appointed Special Advocate (CASA). There are many questions about the roles and effectiveness of each of these forms of representation, such as whether their efforts are duplicative and how the representatives relate to each other when more than one is appointed to represent the same child. Advocates for attorneys point out that children are at a disadvantage if they are not represented by qualified legal counsel in dependency proceedings. Advocates for nonlawyer volunteers claim that they have more time to get to understand the child's circumstances and are better able to meet the child's need for non-legal advocacy.

It is the contention of this article that the roles of attorney and volunteer advocates are complementary, that neither adequately replaces the other, and that the weaknesses of each approach dovetail with the strengths of the other. Although communities have developed varied approaches to representation, one of the strongest is the teaming of attorneys and volunteers, in which both advocates have equivalent status but unique roles and both participate directly in the legal proceedings.

### HISTORY OF VOLUNTEER CASA AND GUARDIAN AD LITEM PROGRAMS

A guardian ad litem (GAL) is "a special guardian appointed by the court in which a particular litigation is pending to represent an infant, ward, or incompetent person in that particular litigation."<sup>1</sup> The idea is an old one, dating as far back as the Roman Empire, when the law viewed guardianship as an extension of paternal authority. English common law first used the term, associating it with the courts' duty to protect youth.<sup>2</sup>

Normally, when a child is involved in litigation, the child's parents will perform the duties of a guardian ad litem. However, parents cannot be expected to promote the child's interest when there is a conflict between the parents and the child, and in those circumstances courts can appoint a guardian to perform this duty.<sup>3</sup>

This guardian derives his or her authority from the court's responsibility to protect children, originally part of the inherent powers of equity courts.<sup>4</sup> In fulfilling this duty, courts have broad discretion to weigh the facts relating to the child's best interest in order to protect him or her from harm.<sup>5</sup> However, because the judge must also

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Although communities have developed varied approaches to the representation of children, one of the strongest is the teaming of attorneys and volunteers, in which both advocates have equivalent status but unique roles and both participate directly in the legal proceedings. Many courts now appoint Court Appointed Special Advocate (CASA) volunteers to represent abused and neglected children. While these volunteers do not provide legal services, they do fill a unique role that has proven helpful in moving children into safe, permanent homes.

It is the contention of this article that the roles of attorney and volunteer advocates are complementary, that neither adequately replaces the other, and that the limitations of each approach dovetail with the strengths of the other. CASA volunteers are particularly effective in developing an in-depth understanding of the child's circumstances, identifying the child's needs, and monitoring the child's progress toward permanency. Attorneys are effective at providing a high level of legal protection for children. A better understanding of and respect for the roles of both lawyers and CASA volunteers would improve collaboration on behalf of abused and neglected children. ■

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be impartial, the court can fulfill its duty to protect children partly through the appointment of a guardian ad litem.<sup>6</sup> The guardian ad litem has been described as a surrogate for the court in performing this task, and today, guardians ad litem are considered officers of the court.<sup>7</sup>

Although the term "guardian ad litem" is sometimes used to refer to the child's attorney, the role differs from that of the traditional attorney. The core function of a guardian ad litem is to help the court understand the child's true circumstances and needs.<sup>8</sup> While legal counsel can help fulfill this function, legal advocacy does not fully encompass the unique and important role of the guardian ad litem as a fact-finder and reporter on behalf of the court. Legal representation is a necessary but not sufficient ingredient of guardian ad litem advocacy.

For years, attorneys and others interested in the representation of abused and neglected children in court have recognized the need for quality representation but debated how attorneys should fulfill the guardian ad litem role. While legislation, court rules, and practice standards have helped clarify expectations for attorneys appointed to represent abused and neglected children, the attorney's role is still the subject of both debate and confusion.<sup>9</sup>

The appointment of guardians ad litem for children in child protection proceedings throughout the United States received a boost in 1974 with the passage of the Child Abuse Prevention and Treatment Act (CAPTA).<sup>10</sup> The act required, as a condition of receiving federal funds under the act, that "in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child."<sup>11</sup> The legislation did not describe the guardian's duties, nor did it dictate whether the role had to be performed by a lawyer, although the tradition of appointing lawyers to perform this function continued in many courts. Most states did not fully meet the act's requirements,<sup>12</sup> and quality representation remains an unfulfilled aspiration for many abused and neglected children.

In 1977, a Seattle judge recognized that attorneys for children were unable to provide the in-depth fact-finding necessary to help the court make a fully informed decision on placement of abused and neglected children. Superior Court Judge David Soukup formed the first Court Appointed Special Advocate (CASA) program using trained community volunteers as guardians ad litem. A social worker supervised the volunteers, who were represented by legal counsel in court. Based on the early success of the King County program, the National Council of Juvenile and Family Court Judges endorsed this use of volunteers and encouraged the replication of the program in other jurisdictions. Even at this early stage, replications

of the King County program took varying forms, with volunteers in the new locations either acting as guardians ad litem themselves or supplementing the work of children's attorneys.

The National Council of Juvenile and Family Court Judges also helped establish the National Court Appointed Special Advocate Association (National CASA), incorporated in 1984 to promote the growth and development of quality CASA and volunteer guardian ad litem programs nationwide. In 1991, further federal legislation authorized the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, to enter into a cooperative agreement with National CASA to "expand the court-appointed special advocate program."<sup>13</sup> The cooperative agreement remains in effect, providing technical assistance, training, and funding of CASA and volunteer guardian ad litem programs. The CASA and guardian ad litem network has now grown to approximately 843 programs serving over 900 jurisdictions in 49 states, the District of Columbia, and the Virgin Islands. In 1998, over 47,000 volunteers served an estimated 183,000 children. This expansion has been fueled by widespread recognition that "each child involved in judicial proceedings needs an independent voice to advocate for his/her 'best interests.'"<sup>14</sup>

## APPROACHES TO VOLUNTEER REPRESENTATION

CASA programs recruit, train, and supervise volunteers to conduct investigations and make recommendations to courts in child abuse and neglect proceedings. These programs are locally administered and have been individually designed to accommodate local preferences as well as fulfill federal and state statutes and court rules. For those reasons, there are varying approaches to program administration and operation issues such as the definition of the volunteer's role (including whether the volunteer is a full and independent party to the case), the formal status of the volunteer, the administrative responsibility for the program, forms of attorney representation, the formal relationship between the volunteer and attorney for the child (including definitions of the attorney's role), types of cases accepted, and mechanisms for establishing and ensuring compliance with program standards.

Various efforts have been made to identify the key models for representation of abused and neglected children. Hartz and Cooke identify the following five models of volunteer and attorney interaction:<sup>15</sup>

1. An attorney as the guardian ad litem, sometimes assisted by a Court Appointed Special Advocate;

2. An attorney guardian ad litem and independent volunteer representative;
3. Either an attorney, a Court Appointed Special Advocate, or another nonlawyer as the guardian ad litem;
4. A volunteer serving as the guardian ad litem but operating as part of a team with an attorney; and
5. A volunteer serving as the guardian ad litem, with an attorney representing the volunteer.

Ventrell describes six models of legal representation:<sup>16</sup>

1. An attorney guardian ad litem representing the child's best interest by substituting judgment;
2. A nonattorney guardian ad litem communicating the child's best interest through substituting judgment;
3. The traditional attorney acting as a zealous advocate of the child's position and interests;
4. A combination of attorney and lay guardian;
5. An attorney representing a lay guardian; and
6. An attorney for the child acting as a zealous advocate of the child's objective interests.

A national study conducted by the U.S. Department of Health and Human Services on the effectiveness of guardian ad litem representation (referred to herein as "the national study")<sup>17</sup> identified a different set of five models of guardian ad litem representation:

1. Private attorneys appointed and paid by the court;
2. Staff attorneys, perhaps from a legal aid society under contract with the county, or a county office such as the district attorney's office;
3. Law students supervised by a law school clinic or public defender's office;
4. Lay volunteers teamed with paid attorneys; and
5. Lay volunteers acting as the guardian ad litem.

Some of the models describe variations in practice or represent accommodations to limited resources. There are few pure examples of any one of these models; for practical reasons, combinations of these models may exist even within a single court jurisdiction.

These models can be sorted into three approaches to representation: (1) attorney-centered approaches, in which an attorney acts as the representative either alone or with volunteer assistance; (2) volunteer-centered approaches, in which the volunteer is an independent participant in the case; and (3) attorney-volunteer team approaches, in which attorneys and volunteers act as coequal partners, each with a unique and clearly understood role. Where an attorney

acts as the guardian ad litem, a volunteer may only be involved if the attorney requests it. Under that approach, the volunteer may not appear in court, although the national study recommended that CASA volunteers attend hearings if only to present evidence. Under the second approach, where the volunteer is not appointed as assistant to the attorney, the court may receive conflicting recommendations from the volunteer and the guardian ad litem, although disagreements of this kind are unusual.<sup>18</sup>

Both the attorney- and the volunteer-centered approaches have inherent limitations. Attorney-centered systems of representation can, at their best, provide a high level of legal protection for children, a moderate level of nonlegal advocacy, and a high likelihood of role confusion. Volunteer-centered systems provide a high level of nonlegal advocacy and at least a moderate level of legal protection. Evaluations of systems of representation suggest that the strengths of each approach balance the weaknesses of the other. For that reason, the strongest approach to representation of abused and neglected children is the effective teaming of volunteers and attorneys, in which each advocate has equal status and participates directly in the legal proceedings. This approach is best demonstrated by the coappointment of lawyers and volunteers. To make this model work, the participants must understand and respect the differences between nonlegal representation and legal representation, and there must be regular and effective communication between volunteer and attorney.

Much of the writing about the representation of children does not acknowledge that two different functions are involved: legal representation and nonlegal representation. Traditional representatives of children's interests—caseworkers and attorneys—have often been unable to adequately conduct nonlegal representation duties such as investigations, monitoring, and follow-up of cases. The fundamental reason is a lack of time and resources. Rates of pay tend to be low, caseloads are almost always high, and supervision and training are sometimes spotty.

There are variations within these functions, including whether an attorney or a volunteer conducts the nonlegal activities traditionally associated with the guardian ad litem, how purely legal representation is provided for the child, the volunteer's status and relationship to the legal representative, and methods of program administration, including related levels of training and supervision for the advocate. The variations summarized in Table 1 represent structural differences that can affect the nature and quality of legal and nonlegal advocacy for abused and neglected children.

**Table 1. Representation Models**

Nonlegal Representation	Legal Representation
Attorney acting as combined attorney and GAL	Staff attorney
Attorney acting as GAL only	Private attorney paid under contract with the court
Nonlawyer volunteer	Private attorney on pro bono basis
Other nonattorney <sup>19</sup>	
Joint appointment of volunteer and attorney	

## STATUS AND ROLE OF THE VOLUNTEER

There are four essential variations on the role and status of the volunteer representative:

1. Dependent, reporting to the guardian ad litem;
2. Independent, reporting to the court as a friend of the court;
3. Independent, acting as a full party to the case; and
4. Independent, acting as a monitor of court activity and the case plan.

The fourth variation does not provide a strong mechanism for fulfilling the fact-finding role and is not a common approach among CASA and volunteer guardian ad litem programs.

State laws, regulations, or court rules in most states currently provide for the appointment of guardians ad litem in dependency proceedings. Though most states make this appointment mandatory,<sup>20</sup> few provide guardian ad litem representation for all children in dependency proceedings. Some states make the appointment discretionary. Washington, for example, permits a court to decide not to appoint a guardian ad litem where there is good cause showing that the appointment is not necessary.<sup>21</sup>

National standards promulgated by the National Court Appointed Special Advocate Association direct CASA and volunteer guardian ad litem programs to ensure role clarity, if not by statute, by internal policies that specify the role.<sup>22</sup> States generally have not provided this role clarity by statute. Most state legislation provides only general statements about the appropriate role of the guardian ad litem, typically indicating only that the guardian ad litem should advocate for the best interest of the child. These statements often do not specify whether the guardian also acts as the child's legal representative, an oversight that perpetuates much of the discussion about role confusion

for attorneys representing children in dependency proceedings. Some state statutes contain detailed statements of the duties of the guardian ad litem and Court Appointed Special Advocate.<sup>23</sup> Others contain confusing role statements. Washington, for example, provides that independent legal counsel for the child will be deemed to be the guardian ad litem, even though the role of legal counsel is to advocate for the child's expressed wishes.<sup>24</sup>

Recent revisions of the federal legislation on appointment of guardians ad litem have clarified some aspects of the guardian ad litem requirement. CAPTA now includes a provision that the guardian ad litem may be "a lawyer, a court appointed special advocate, or both" and states that the role of a guardian ad litem is "to obtain first-hand, a clear understanding of the situation and needs of the child, and to make recommendations to the court concerning the best interests of the child."<sup>25</sup> Nevertheless, there is still a lot of variation in whether volunteers can serve as guardians ad litem and whether they have the status of a full party to the case.

In some states and localities, the Court Appointed Special Advocate program is the guardian ad litem program, and the volunteers may have that status in the legal proceedings. In the state of Washington, 11 of 27 programs have this designation. North Carolina operates a statewide guardian ad litem program under the auspices of the state courts. The program uses a team approach in which lawyers are paired with volunteers. Some state statutes require that the guardian ad litem be an attorney.<sup>26</sup> Some allow the appointment of a nonattorney volunteer as the guardian ad litem,<sup>27</sup> and some state statutes also allow courts to appoint attorneys who do not function as guardians ad litem.<sup>28</sup>

In 1994, approximately 60 percent of CASA volunteers served as the guardian ad litem, and 34 percent served as a friend of the court. Some states define the volunteers' status as officers of the court but not as parties to the case.<sup>29</sup> This status, however, can confer rights similar to those of a formal party, such as the right to receive notice of hearings, to be present at those hearings, to have access to information, and to present evidence at the hearing.

Regardless of the program model, lay volunteers do not participate in the case as legal counselors to the child but as individuals appointed to represent the child's best interest, just as a parent would in a case not involving parental child abuse or neglect.<sup>30</sup> Legal knowledge is not necessary for the volunteer's most important functions: gathering information to develop an understanding of the child's needs, reporting that information, and acting as nonlegal advocate both during the processing of the case and in the community. Nor does the volunteer provide legal services in fulfilling that role. The National CASA training

curriculum for volunteers notes that they are recruited not for their legal knowledge, but for their “unique qualities, community perspective, common sense approach and excellent training.”<sup>31</sup> Included in the national standards is a provision that the volunteer does not give legal advice.

It may sometimes be inappropriate for attorneys to perform some of these functions. At the very least, attorneys need special nonlegal training to perform these functions well. As noted in the Florida Rules Regulating the Florida Bar, “As guardians ad litem ... lawyers are called upon to fulfill significantly different roles in the litigation process than they fulfill as lawyers, and their conduct is regulated by other rules. Often guardians ad litem are required to act in the best interests of children even if this conflicts with the children’s wishes, to serve as investigators for courts, or both. Neither of these functions is compatible with a lawyer’s normal responsibility to be a zealous advocate for a client.”<sup>32</sup> Moreover, rules of ethics may prohibit attorney guardians ad litem from testifying.<sup>33</sup>

The nonlawyer volunteer fulfills these roles even if appointed as the child’s guardian ad litem. The guardian’s authority derives from the court’s responsibility to protect children, originally part of the inherent powers of equity courts.<sup>34</sup> The court has broad discretion to weigh the facts relating to the child’s best interest in order to protect the child from harm.<sup>35</sup> However, because the court must also be impartial, this duty to protect children may be accomplished in part through the appointment of a guardian ad litem.<sup>36</sup> The guardian ad litem may even be considered as a surrogate for the court in performing this task.<sup>37</sup>

The function of the guardian ad litem is to help the court understand the true needs of the child.<sup>38</sup> Legal knowledge is not required to develop this understanding of a child’s needs, although legal assistance may be needed to help in the process of presenting information to the court or ensuring that the court processes operate effectively on behalf of the child.

The national study of the effectiveness of legal representation for children found that citizen volunteers provide a different style of advocacy and perform many activities in ways that attorneys do not, especially in the areas of investigation, monitoring, and resource brokering. “Resource brokering” refers to the ability to make support services within the community available to the child. CASA volunteers also often place greater emphasis on promoting cooperation among the parties to a case. These are particularly important activities in court cases, where the adversarial nature of and frequent delays in the proceedings can be devastating to children. The volunteer’s involvement can help reduce this damage to children.

The national study identified five activity areas associated with the guardian ad litem role. The first is fact-

finding or information gathering: meeting with, interviewing, and observing the child repeatedly over a period of time; visiting both the child’s and the parents’ homes; contacting caseworkers; reading the petition; reviewing the case record; and contacting other adults who may have pertinent information. These are the kind of activities that help the advocate gain insight into what is best for a child, what kinds of services may be helpful, and what support is needed to move toward permanency.

The fact-finding function does not require legal skills, and, in fact, most attorney guardians ad litem do not perform these activities. The national study found that volunteer representatives were much more likely than lawyers to engage in them. About two-thirds of Court Appointed Special Advocate volunteers reported they observed parent-child interactions, while only 40 percent of staff attorneys and 38 percent of private attorneys did so.<sup>39</sup> Noting that “observation is necessary in making placement assessments,” the same study found that 90 percent of CASA volunteers visited the home while only one-third of attorneys did so.<sup>40</sup> One of the study’s conclusions was that “CASAs perform additional, important activities on cases that are not performed by private or staff attorneys, especially in investigation, monitoring, and brokering.”<sup>41</sup> Other studies have also found that these nonlegal activities are a particular strength of the CASA model.<sup>42</sup>

The second activity area is legal representation. This was defined in the national study to include appearance at hearings, filing of motions and other legal papers, and advising the child client on legal issues. The study also included within this activity area the role of reporter to the court, though this could be considered a separate role because it does not require legal knowledge. In the reporter role, the volunteer or guardian ad litem may be called at trial to present testimony, because the guardian has firsthand knowledge of key facts the court needs to make a decision. Effective performance of this role requires common sense and firsthand knowledge of the child. It may involve various recommendations for the case plan, including placement of the child, and recommendations for services and on visitation issues. The focus of this part of the guardian’s work and report is the social, not the legal, aspect of the case. The national study found that attorneys performed legal representation activities, except for reporting, much more often than volunteers.

The third activity area is mediation and negotiation, including the development of agreements and stipulations. While the national study found that attorneys were much more likely to initiate negotiations, all representatives participated in negotiations at about the same rate.

The fourth area is case monitoring: maintaining contact with the child and other parties, monitoring the

child's special needs, and following up on court orders. Much of these activities are nonlegal in nature, and again, the national study found that volunteer models were much more likely to engage in them. This fourth area extends the role of the nonlegal advocate. What happens between court appearances is crucial to a successful placement decision. According to Mark Soler of the Youth Law Center, "[p]articularly in the early stages of dependency proceedings, the legal aspects of the case are outweighed by psychological or sociological considerations, and the effective use of experts is essential to good representation."<sup>43</sup>

The fifth activity area is resource brokering, including work within the community to help the child obtain needed services. The national study did not find consensus about whether representatives should perform this role within the jurisdictions studied, nor did it find significant differences among the models of representation with respect to these activities.

Table 2 summarizes the findings of the national study concerning attorney and volunteer activities in representing abused and neglected children.<sup>44</sup>

Table 3 lists strengths and weaknesses of each model as reported in the findings of several evaluations of representation.

#### ADMINISTRATION OF VOLUNTEER REPRESENTATION PROGRAMS

Some variations in administration of volunteer programs are quite apparent but have little impact on the effectiveness of representation. For example, volunteer representation programs are known by many different names, even though most are members of the National Court Appointed Special Advocate Association. Approximately 63 percent of these programs currently use the name "CASA." Many use the name "guardian ad litem." Of course, name differences do not necessarily denote major differences in approach. Different approaches to state oversight of volunteer representation programs and other such variations in administrative structures can, however, have a great effect on the nature of representation provided to children. In a few states,<sup>45</sup> a state agency, usually the Administrative Office of the Courts, administers and operates the program throughout the state. Some of these state offices, such as in North Carolina and Utah, oversee both volunteers and attorneys representing children. Four other states<sup>46</sup> have a state agency with responsibility for oversight and coordination of independently operated CASA-member programs in the state, though these state agencies do not directly operate the programs.

When a state agency oversees the CASA or volunteer guardian ad litem program, concerns may arise that the

**Table 2. Guardian ad Litem Activities as Defined in National Study**

Activities	Attorney GALs	Nonattorney Volunteers
<b>Fact-finding and investigation</b>	Few client contacts  Most do not visit home or contact other adults	Many client contacts  Most visit the home and contact other adults
<b>Legal representation</b>	95% attend all hearings  11% submit written reports to court  86% rated their legal representation as effective	53% attend all hearings  67% submit written reports to court  45% rated their legal representation as effective
<b>Mediation and negotiation</b>	85% initiated negotiations  Most were very involved in negotiations	38% initiated negotiations  Most were very involved in negotiations
<b>Case monitoring</b>	Fewer than half maintained contact with the child  Fewer than half contacted caseworker after review hearing	95% maintained contact with child  80% contacted caseworker after review hearing
<b>Resource brokering</b>	No major differences	

volunteer advocacy cannot be truly independent. This is especially true if the program is operated under the auspices of the social services department, an unusual but not unknown arrangement. Such an administrative arrangement is likely to impinge upon the program's independence, especially given the frequency of perceived conflicts between guardian ad litem and caseworker recommendations.<sup>47</sup>

Similar questions also arise when the program is administered under the auspices of the court, though the concerns are less serious than with administration by the social services department. The CASA or guardian ad litem volunteer is performing as an officer of the court, fulfilling a delegated duty that was originally part of the court's responsibility to children. Courts administering volunteer representation programs must therefore be diligent to encourage and maintain program independence. Systems that use court administration for these programs must ensure that court administrators understand the program's role, and judges must have a strong commitment to independent advocacy.

**Table 3. Key Strengths and Weaknesses of Advocates****Strengths:**

Staff Attorney	Private Attorney	Volunteer
Courtroom performance	Courtroom performance Negotiation <sup>48</sup>	Comprehensive training Investigation <sup>49</sup> Monitoring Supervision

**Weaknesses:**

Staff Attorney	Private Attorney	Volunteer
Nonlegal activities	Fact-finding, monitoring	Timeliness of appointment
High caseloads	Inadequate time and support	Attendance at all hearings
Formal training	Supervision and feedback	Legal representation in court <sup>50</sup>
Performance feedback	GAL-specific training Lack of independent organizational structure Compensation	

Nonprofit organizations administer the majority of Court Appointed Special Advocate and volunteer guardian ad litem programs. In Connecticut and New Hampshire, nonprofit organizations operate statewide multisite systems. In many other states,<sup>51</sup> nonprofit statewide organizations provide technical assistance and other services, and sometimes funding, to independently operated CASA programs. Programs in those states may be operated by a local nonprofit organization or as part of county government. A few states<sup>52</sup> do not currently have a formal statewide CASA-member program or organization, operating instead at the state level as an informal network of programs.

Some state organizations monitor programs for compliance with state program standards. These standards may be established through general legislation authorizing the use of CASA programs in the state or through court rules or directives. Monitoring by state organizations may be ongoing, on an annual basis, or every two to three years. In 1997, 20 state organizations indicated that they provided one of these forms of program monitoring.

Over the last five years, an increasing number of CASA programs have been developed by nonprofit organizations. In 1997, over 60 percent of National CASA-member programs were nonprofit organizations, almost twice their

ratio only a few years earlier. Government-operated programs are not apparently being developed nearly as fast as privately operated programs. Another growing trend in recent years has been the startup of new CASA programs under the auspices of another umbrella organization. While effective for the developmental stages of a new program, these administrative structures can lead to questions about independence, particularly if the umbrella organization is also a service provider under contract to the county or state.

Local practices, including the understanding and wishes of local judges, can greatly affect the way a volunteer representation program operates. Most fundamentally, the volunteers' ability to operate as independent advocates requires the commitment and support of the judge. Because resources are universally scarce, there are also differing approaches to case selection. In some jurisdictions, nonlegal advocates tend to be assigned to cases involving younger children, either because it is believed that the impact of faster permanency can be greater for these children or because it is felt that these children cannot direct an attorney, so that nonlegal representation is more important for them. Volunteers may also be assigned when the child's attorney perceives a conflict between the child's wishes and what appears to be in the child's best interest. In other jurisdictions, judges may reserve volunteer appointments for the more difficult and complex cases as they are the ones in which additional sources of information are most needed.

Appointment of legal representatives varies as well. Lawyers may be appointed as a backup option when lay volunteers are not available, or they may be appointed to represent all children over a certain age (often 12). Judges may appoint lawyers when requested by such a child or when there is a conflict between the guardian ad litem and the child.

## CONCLUSION

All abused and neglected children involved in the court system deserve high-quality representation that helps meet both their legal and their nonlegal needs. Representation by attorneys can be highly effective in ensuring that a child's best interest is served, that the child's desires are clearly presented to the court, and that the child is appropriately involved in the proceedings. Representation by nonattorney volunteers is particularly effective in developing a detailed understanding of the child's unique circumstances and in providing nonlegal advocacy for the child during the court process and in the community. By more effectively combining these forms of representation, with appropriate regard for the independence and the

unique contributions of each, all decision-makers in the child protection system can be better equipped to arrive at decisions that help each child find a safe, permanent home as quickly as possible.

## NOTES

1. Black's Law Dictionary 706 (6th ed. 1990).
2. See Charles P. Sherman, *The Debt of the Modern Law of Guardianship to Roman Law*, 12 Mich. L. Rev. 124 (1913).
3. *In re Lisa G.*, 504 A.2d 1, 5 (N.H. 1986).
4. *McRae v. McRae*, 52 So. 2d 908 (Fla. 1951).
5. *Risener v. Risener*, 9 So. 2d 108 (Fla. 1942).
6. *James v. James*, 64 So. 2d 534 (Fla. 1953).
7. Brian Fraser & Harold P. Martin, *An Advocate for the Abused Child*, in *Child Abuse and Neglect: The Family and the Community* (Ray E. Helfer & C. Henry Kempe eds., Ballinger 1976).
8. Marshall A. Levin, *The Guardian Ad Litem in a Family Court*, 34 Md. L. Rev. 341, 362 (1974).
9. See Symposium, *Ethical Issues in the Legal Representation of Children*, 64 Fordham L. Rev. (1996); Abigail B. Sivan & Mary Quigley-Rick, *Effective Representation of Children by the Guardian Ad Litem: An Empirical Investigation*, 19 Bull. Am. Acad. Psychiatry L. 53 (1991).
10. 42 U.S.C. §§ 5101-5107 (1998).
11. 42 U.S.C. § 4(b)(2)(g)(1998).
12. U.S. Dep't of Health and Human Services & CSR, Inc., National Study of Guardian Ad Litem Representation 1 (1990) (hereinafter *Guardian ad Litem Study*).
13. 42 U.S.C. § 13013 (1998).
14. U.S. Dep't of Health and Human Services, Admin. for Children and Families, Admin. on Children, Youth and Families, Nat'l Center on Child Abuse and Neglect, Final Report on the Validation and Effectiveness Study of Legal Representation Through Guardian Ad Litem 1-2 (1995) (hereinafter *Final Report*).
15. Rebecca H. Heartz & Irene Cooke, *CASA Volunteers and Attorneys: A Partnership That Works* (National CASA Ass'n 1995).
16. Marvin R. Ventrell, *Models of Child Advocacy: Achieving a Balance of Beneficence and Autonomy*, in *Child Advocacy at a Crossroads: The Development and Direction of Children's Law in America* 135, 138-40 (Nat'l Ass'n of Counsel for Children 1996).
17. Final Report, *supra* note 14.
18. *Guardian ad Litem Study*, *supra* note 12, at 6-13.
19. May be a staff member of the CASA program in some jurisdictions.
20. National Council of Juvenile and Family Court Judges, *Permanency Planning for Children Project, Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice* 66 (1998).
21. Wash. Rev. Code § 13.34.100 (1998).
22. Standards for Court Appointed Special Advocate (CASA) Programs Affiliated with the National CASA Association (NCASAA) Requirement VIII.E.(2) (National CASA Ass'n 1997).
23. *E.g.*, La. Ch. C. Art. 424 (1995).
24. Wash. Rev. Code § 13.34.100(1) (1998).
25. 42 U.S.C. § 5106a(b)(2)(A)(ix) (1998).
26. *E.g.*, D.C. Code Ann. § 16-2304(b)(3) (1989).
27. See Ohio Rev. Code Ann. § 2151.281 (Banks-Baldwin 1998).
28. Cal. Welf. & Inst. Code § 317(c) (West Supp. 1995).
29. *E.g.*, Wash. Rev. Code § 13.34.105(2) (1998).
30. See Roy T. Stuckey, *Guardians Ad Litem as Surrogate Parents: Implications for Role Definition and Confidentiality*, 64 Fordham L. Rev. 4 (1996).
31. National Court Appointed Special Advocate Ass'n, *Comprehensive Training for the CASA/GAL, Unit 7*, 42 (1989).
32. Stuckey, *supra* note 30, at 4.
33. Florida Rules Regulating the Florida Bar Rule 4-3.7 (West 1991).
34. *McRae v. McRae*, 52 So. 2d at 908.
35. *Risener v. Risener*, 9 So. 2d at 108.
36. *James v. James*, 64 So. 2d at 534.
37. Fraser & Martin, *supra* note 7.
38. Levin, *supra* note 8.
39. Final Report, *supra* note 14, at 6-6, 6-7.
40. *Id.* at 6-7.
41. *Id.* at 6-4.



## NOTES

42. Trina G. Bogle et al., Evaluation of the Virginia Court-Appointed Special Advocate (CASA) Program (Criminal Justice Research Ctr. 1996); Karen C. Snyder et al., A Report to the Ohio Children's Foundation on the Effectiveness of the CASA Program of Franklin County: Phase II, the Strategy Team (Ohio Children's Found. 1996).
43. Mark I. Soler et al., Representing the Child Client 4–5 (Matthew Bender 1988).
44. Guardian ad Litem Study, *supra* note 12.
45. Including Arizona, Delaware, Florida, Hawaii, Iowa, Maine, North Carolina, South Carolina, and Utah.
46. Arkansas, Indiana, Oregon, and Virginia.
47. *See* Guardian ad Litem Study, *supra* note 12, at 5–23.
48. Snyder found that Court Appointed Special Advocates and attorneys performed similarly in mediation and negotiation.
49. Guardian ad Litem Study, *supra* note 12, at 5–49; Bogle, *supra* note 42; Snyder, *supra* note 42.
50. Other studies do not confirm this weakness. *See, e.g.*, Snyder, *supra* note 42.
51. Including Alaska, California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, Ohio, Oklahoma, Texas, Virginia, Washington, and West Virginia.
52. Including Kentucky, New Jersey, South Dakota, Wisconsin, and Wyoming.

